

**JORDAN STEIKER**

The University of Texas  
School of Law  
727 East Dean Keeton Street  
Austin, Texas 78705  
(512) 232-1346

**EMPLOYMENT**

**The University of Texas School of Law, 1990-present.**

Judge Robert M. Parker Chair in Law.

Director, Capital Punishment Center.

Subjects: Criminal Law; Constitutional Law (Structure, Equal Protection, Race Discrimination, Sex Discrimination); Capital Punishment; Habeas Corpus; Property.

Harvard Law School. Visiting Professor, Spring, 2003; Fall, 2014; Fall 2018.

Law Clerk to Justice Thurgood Marshall, United States Supreme Court, 1989-90.

Law Clerk to Hon. Louis H. Pollak, United States District Judge, Eastern District of Pennsylvania, 1988-89.

Bredhoff & Kaiser (Washington, D.C.), Summer, 1987.

Texas Rural Legal Aid (Weslaco, Texas), Farmworker Division, Summer, 1986; Winter, 1988.

Teaching Fellow, Harvard College, 1987-1988 (for Professors Michael Sandel, Amartya Sen, and Dennis Thompson).

**EDUCATION**

**Harvard Law School, J.D., *magna cum laude*, 1988**

*Harvard Law Review*

Prison Legal Assistance Project.

Students for Public Interest Law: Landlord-Tenant Project.

Teaching Assistant, Federal Criminal Litigation, Spring, 1987.

Legal Methods Instructor, Fall, 1986.

**Wesleyan University**, B.A., Philosophy, with honors, 1984.

Phi Beta Kappa, 1984

Wise Prize: Wesleyan's philosophy prize, 1984.

Student Fellow, Center for the Humanities, 1983.

Rich Prize, 1984, Briggs Prize, 1983, Parker Prize, 1982,  
for excellence in oratory.

## **PUBLICATIONS**

*Comparative Constitutional Law* (Edward Elgar Press) (2018)  
(edited with Carol Steiker);

*Capital Punishment* (Oxford University Press) (with Carol Steiker) (2019);

*Aggravating and Mitigating Circumstances*, in *Death Penalty Handbook* (Gavin Lee, ed.) (with Carol Steiker) (2018);

*The Problem of 'Rubber Stamping in State Capital Habeas Proceedings: A Harris County Case Study*, *U. Houston Law Review* (with Thea Posel and Jim Marcus) (2018)

*Abolishing the American Death Penalty: The Court of Public Opinion Versus The U.S. Supreme Court*, 51 *Valparaiso L. Rev.* 579-603 (2017) (with Carol Steiker);

*Capital Punishment*, in *Reforming Criminal Justice* (Erik Luna, ed.) (2017), 147-167 (with Carol Steiker)

*Courting Death: The Supreme Court and Capital Punishment* (Harvard Univ. Press, 2016) (with Carol Steiker).

*The American Death Penalty and the (In)Visibility of Race*, 82 *U. Chi. L. Rev.* 101-54 (2015) (with Carol Steiker).

*Lessons for Law Reform from the American Experiment with Capital Punishment*, 87 *USC L. Rev.* 733-84 (2014) (with Carol Steiker).

*The Death Penalty and Mass Incarceration: Convergences and Divergences,* 41 Am. J. Crim. L. 189-207 (2014) (with Carol Steiker).

*The American Death Penalty from a Consequentialist Perspective,* 47 Tex. Tech. L. Rev. 211-21 (2014).

*Miller v. Alabama: Is Death Still Different?* 11 Ohio St. J. Crim. L. 37-56 (2013) (with Carol Steiker).

*Peculiar Times for a Peculiar Institution,* 48 Tulsa L. Rev. 357-72 (2012) (reviewing David Garland, *Peculiar Institution: America's Death Penalty in Age of Abolition*).

*Entrenchment and/or Destabilization? Reflections On (Another) Two Decades of Constitutional Regulation of Capital Punishment,* 30 Law and Inequality 211 (2012) (with Carol Steiker).

*Broken and Beyond Repair: The American Death Penalty and the Insuperable Obstacles to Reform,* in *The Oxford Handbook of Sentencing and Corrections* (Petersilia & Reitz, eds.) 2012 (with Carol Steiker).

*Graham Lets the Sun Shine In: The Supreme Court Opens a Window Between Two Formerly Walled-Off Approaches to Eighth Amendment Proportionality Review,* 23 Fed. Sent'g Rep. 79 (2010) (with Carol Steiker).

*Capital Punishment: A Century of Discontinuous Debate,* 101 J. Crim. L. & Criminology 643 (2010) (with Carol Steiker).

*Cost and Capital Punishment: A New Consideration Transforms an Old Debate,* 2010 U. Chi. Legal F. 117 (with Carol Steiker).

*No More Tinkering: The American Law Institute and the Death Penalty Provisions of the Model Penal Code,* 89 Tex. L. Rev. 353 (2010) (with Carol Steiker).

*Report to the American Law Institute Concerning Capital Punishment,* 89 Tex. L. Rev. 367 (2010) (with Carol Steiker).

*Brown's Descendants*, 52 Howard Law Journal 583 (2009).

*Opening a Window or Building a Wall? The Effect of Eighth Amendment Death Penalty Law and Advocacy on Criminal Justice More Broadly*, 11 Univ. of Pennsylvania Journal of Constitutional Law 155 (2009) (with Carol Steiker).

*Penry v. Lynaugh: The Hazards of Predicting the Future*, in *Death Penalty Stories* (Foundation Press 2009).

*Death Penalty Stories* (Foundation Press 2009) (with John Blume).

*Atkins v. Virginia: Lessons from Substance and Procedure in the Constitutional Regulation of Capital Punishment*, 57 DePaul Law Review 501 (2008) (with Carol Steiker).

*Improving Representation in Capital Cases: Establishing the Right Baselines in Federal Habeas to Promote Structural Reform Within \_\_\_\_\_ States*, 34 American Journal of Criminal Law 175 (2008).

*The Role of Constitutional Facts and Social Science Research in Capital Litigation: Is 'Proof' of Arbitrariness or Inaccuracy Relevant to the Constitutional Regulation of the American Death Penalty*, in *The Next Generation of Death Penalty Research* (Acker, et al, eds.) (2008).

*The Beginning of the End?* in *The Road to Abolition* (Sarat & Olgetree, eds.) (2009) (with Carol Steiker).

*The Future of Federal Constitutional Regulation of the Death Penalty: Waging the War for Public Opinion in Kansas v. Marsh*," 105 Michigan Law Review First Impressions 85 (2006).

*A Tale of Two Nations: Implementation of the Death Penalty in 'Executing' Versus 'Symbolic' States in the United States*, 84 Texas Law Review 1869 (2006) (with Carol Steiker).

*Foreword: Symposium on Punishment Law and Policy*, 84 Texas Law Review 1687 (2006) (with Susan Klein).

*The Shadow of Death: The Effect of Capital Punishment on American Criminal Law and Policy,*" 89 *Judicature* 250 (2006) (with Carol Steiker).

*Roper v. Simmons*, 4 *International Journal of Constitutional Law* 163 (2006).

*Capital Punishment in Federalism in America: An Encyclopedia* (2006) (eds. Marbach, Katz, & Smith).

*The Death Penalty as Applied in America: Sober Second Thoughts*, in *Capital Punishment: A Balanced Examination* (ed. Evan Mandel) (with Carol Steiker) (2006).

*The Seduction of Innocence: The Attraction and Limitations of the Focus on Innocence in Capital Punishment Law and Advocacy*, 95 *Journal of Criminal Law & Criminology* 587 (2005) (with Carol Steiker).

*Abolition in Our Time?* 1 *Ohio State Journal of Criminal Law* 323 (2003) (with Carol Steiker).

*The Search for Equality in Criminal Sentencing*, 2002 *Supreme Court Review* 223 (2003) (with Susan Klein).

*Rethinking Brown: Does it Matter What the Court Said?* (reviewing, Jack Balkin, ed., "'What *Brown v. Board of Education*' Should Have Said"), 81 *Texas Law Review* 305 (2002).

*Federal Habeas and the Death Penalty: Reflections on the New Habeas Provisions of the Anti-Terrorism and Effective Death Penalty Act*, in *Essential Readings on Political Terrorism* (Gordian Knot Press 2002) (H. Kushner, ed.).

*Should Abolitionists Support Legislative 'Reform' of the Death Penalty?*," 63 *Ohio State Law Journal* 417 (2002) (with Carol Steiker).

*Did the Oklahoma City Bombers Succeed?*" *Annals* 170 (2001).

*Habeas Corpus*, in *Encyclopedia of Crime and Justice* (Joshua Dressler, ed.) (2001).

*Habeas Exceptionalism*, 78 *Texas Law Review* 1703 (2000).

*Defending Categorical Exemptions to the Penalty: Reflections on the ABA's Resolutions Concerning the Execution of Juveniles and Persons with Mental Retardation*," 61 *Law and Contemporary Problems* 89 (1998) (with Carol Steiker).

*Restructuring Post-Conviction Review of Federal Constitutional Claims Raised by State Prisoners: Confronting the New Face of Excessive Proceduralism*, 1998 *Chicago Legal Forum* 315.

*The Constitutional Regulation of Capital Punishment Since Furman v. Georgia*," 29 *St. Mary's Law Journal* 971 (1998) (Address) (with Carol S. Steiker).

*Cruel and Unusual Punishment*, in *The Constitution and its Amendments* (Roger K. Neuman, ed.) (1998).

*Judicial Developments in Capital Punishment Law*, in *America's Experiment with Capital Punishment* (James R. Acker, et. al, eds.) (with Carol Steiker) (1997).

*Reflections on a Quarter-Century of Constitutional Regulation of Capital Punishment*, 30 *John Marshall L. Rev.* 399 (1997) (panel discussion).

*Decisionmaking in Capital Cases: Confronting the Limits of Legal Language*, 94 *Michigan Law Review* 2590 (1996).

Book Review: *Post Liberalism* (reviewing Robert Post, *Constitutional Domains: Democracy, Community, Management*), 74 *Texas Law Review* 1059 (1996).

Book Review of *Punishment and the Death Penalty* (Robert M. Baird and Stuart E. Rosenbaum, eds.) *Canadian Philosophical Reviews* (February, 1996).

*Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment*, 109 *Harvard Law Review* 355 (1995) (with Carol Steiker).

*Taking Text and Structure Really Seriously: Constitutional Interpretation and the Crisis of Presidential Eligibility*," 74 *Texas Law Review* 237 (1995) (with Sanford Levinson and J.M. Balkin).

*Incorporating the Suspension Clause: Is there a Constitutional Right to Federal Habeas Corpus For State Prisoners?* 92 *Michigan Law Review* 862 (1994).

*Innocence and Federal Habeas*, 41 *U.C.L.A. L. Rev.* 303 (1993).

*The Long Road Up from Barbarism: Thurgood Marshall and the Death Penalty*, 71 *Texas Law Review* 1131 (1993).

*Judging the Executioners: Progressive Politicians and the Death Penalty*, 2 *Reconstruction* 112 (1993).

Review Essay, *Let God Sort Them Out? Refining the Individualization Requirement in Capital Sentencing*, 102 *Yale Law Journal* 835 (1992) (with Carol Steiker).

Book Review. *A Community of Liberals*, (reviewing Edwin Baker's *Human Liberty and Freedom of Speech* and Steven Shiffrin's *The First Amendment, Democracy, and Romance*), 69 *Texas Law Review* 795 (1991).

*Developments in Religion and the State: The Free Exercise Clause*, 100 *Harvard Law Review* 1703 (1987).

#### **SELECTED ACADEMIC AND PROFESSIONAL PRESENTATIONS**

"Bill of Rights Day," National Constitution Center (presenting *Courting Death*), Dec. 15, 2016 (with Carol Steiker).

"Conference on *Courting Death*," Harvard Law School, Nov. 18, 2016 (with Carol Steiker).

"American Death Penalty: Dichotomy between Normative and Constitutional Arguments Surrounding Capital Punishment," Northwestern University Law School, Nov. 11, 2016 (with Carol Steiker).

"*Courting Death*," Mahindra Center, Harvard University, Oct. 27, 2016 (with Carol Steiker).

"The Future of the American Death Penalty," Univ. of Arkansas Law, Oct. 21, 2016.

"Tabor Lectures," Valparaiso Law School, April 21-22, 2016 (with Carol Steiker).

"The Prospects of Abolition," University of Michigan Law School, Feb. 6, 2016 (with Carol Steiker).

"Race and the American Death Penalty," Cornell Law School, Oct. 9, 2015).

"Intellectual Disability and the Death Penalty," International Association of Law & Mental Health, Vienna, July 14, 2015.

"Past, Present, & Future of American Death Penalty," Austin Criminal Defense Lawyers, May 15, 2015.

"Consequentialist Analysis of Capital Punishment," Texas Tech Law School, April 4, 2014.

"Briseno, the Categorical Exclusion of Offenders with Intellectual Disability, and the Texas Death Penalty," William and Mary Law School, March 14, 2014.

"Mistake in American Criminal Law," Amherst College, February 10, 2014.

"Constitutional Regulation of the American Death Penalty," U. Richmond Law School, April 11, 2013 (with Carol Steiker).



"The American Death Penalty in Historical Perspective,"  
Cornell Law School, January 24, 2013.

"Reflections on(Another) Twenty Years of Constitutional  
Regulation of the American Death Penalty," Criminal Justice  
Roundtable, Columbia University Law School, May 4, 2012  
(with Carol Steiker).

"Lynching and Capital Punishment: The Complicated Threads  
Connecting and Separating Two American Practices,"  
University of Texas Capital Punishment Center Conference on  
Lynching and the Death Penalty, University of Texas School  
of Law, March 23, 2012 (with Carol Steiker).

"The American Death Penalty: Constitutional Regulation as  
the Distinctive Feature of American Exceptionalism,"  
Keynote Address, Miami Law Review Conference on Capital  
Punishment, University of Miami Law School, February 17,  
2012.

"The New Era of Reform: Will the Modern Transformation of  
the American Death Penalty Herald Abolition," Keynote  
Address, Journal of Law and Inequality, University of  
Minnesota Law School, November 10, 2011.

"The Transformation of the American Death Penalty (with  
Special Attention to the Role of Religious Thought),"  
Austin Presbyterian Theological Seminary, September 15,  
2011.

"The Future of the American Death Penalty," Radcliffe  
Center for Advanced Study," May 20, 2011.

"Continuity and Discontinuity in American Death Penalty  
Reform," University of Texas Forum, May, 2011.

"The Past, Present, and Future of Capital Punishment in the  
United States," University of Texas LAMP (UT Alumni Group),  
January, 2011.

"Race and the American Death Penalty," American Criminology  
Society, November 19, 2010 (with Carol Steiker).

"History, Ideology, and Discourse: The Evolution of the American Death Penalty," Southern Methodist University, September 14, 2010.

"The Role of State Capital Reform in the Constitutional Calculus," University of Texas School of Law, April, 2010.

"Surprising Silence: Race, Capital Punishment, and Judicial Review," DePaul University Law School, January 29, 2010 (with Carol Steiker).

"The American Law Institute Withdrawal of the Model Penal Code Death Penalty Provision: The Case for Abolition," Kansas Legislature (Topeka, Kansas), January 18, 2010.

"Capital Punishment and Criminal Justice in the U.S. Supreme Court: Past & Prospective, University of Texas, September 30, 2009.

"U.S. Supreme Court Term in Review," Federal District Court, Puerto Rico, August 13 & 14, 2009.

"Litigation Strategies for Capital Adjudication in the U.S. Supreme Court," NYU Law School, June 12, 2009.

"Race and the American Death Penalty," University of Texas School of Law, April 16, 2009.

"Brown's Descendants," Howard University Law School, October 24, 2008.

"Opening a Window or Building a Wall: The Effect of Eighth Amendment Death Penalty Law and Advocacy on Criminal Justice," University of Pennsylvania Law School, February 16, 2008.

"Prospects for Judicial Abolition of the Death Penalty," Harvard Law School, February 15, 2008 (with Carol Steiker).

"*Penry v. Lynaugh*: Individualization and Texas Capital Statute," University of Texas School of Law, November 2, 2007. "History of the Death Penalty in the United States," University of Texas Sociology Class, September 19, 2007.

"The American Death Penalty: Federal Constitutional Regulation and the Prospects for Judicial Abolition," Oxford University, April, 2007.

"The Implications of *Atkins* for the Future Constitutional Regulation of Capital Punishment," DePaul University, March, 2007 (with Carol Steiker).

"Improving Representation in Capital cases: Establishing the Right Baselines and Incentives to Achieve Institutional Reform," University of Texas School of Law, February, 2007.

"The Future of Empirical Research and the Death Penalty," SUNY Albany, October, 2006.

"*Kansas v. Marsh*: Supreme Court Review," University of Texas School of Law, September, 2006.

"Federal Habeas, Retroactivity, and the Anti-Terrorism and Effective Death Penalty Act," Harvard Law School, April, 2006.

"The Supreme Court and the Civil Rights: Review of the 2003 and 2004 Terms," University of Texas School of Law, May, 2005.

"Concerns About the Argument from Innocence," Yale Law School, February, 2005 (with Carol Steiker).

"Innocence and the Death Penalty," Northwestern Law School, November, 2004 (with Carol Steiker).

"The Presidential Election and Judicial Nominations," University of Texas School of Law, October, 2004 (moderator).

"American Criminal Justice, Substantive and Procedural," Rio de Janeiro, Brazil, August, 2004.

"Federal Habeas: Contemporary Issues," Panel at the Fifth Circuit's Annual Conference, Austin, May, 2004.

"The Legacy of Brown v. Board of Education: Lessons About the Roles of Courts and Communities in Guaranteeing Equal Education," at the Fifty Year Commemoration of Brown held at University of Texas School of Social Work, May, 2004.

"The United States-International Divide on the Death Penalty: Substance, Procedure and the Consular Notification Question," at Symposium on the Death Penalty and Mexico-U.S. Relations: Historical Continuities and Present Dilemmas, University of Texas School of Law, April, 2004.

"Southern Exceptionalism and the Future of the American Death Penalty," at the European Union Center, George H.W. Bush Presidential Library (Texas A&M University), January 2004.

"The Death Penalty Without Executions: A Regional Perspective," Five-Star Forum, Cheltenham, PA, October, 2003.

"Federal Regulation of the Death Penalty," July 26, 2003, Dallas, Texas. Training for Trial Lawyers in Capital Litigation, Program of the Center for American and International Law.

"Proportionality Resurrection: The Significance and Scope of *Atkins v. Virginia*," October 28, 2002, University of Texas School of Law (Program of the Center for American and International Law).

"American Constitutionalism & Punishment," Recife, Brazil, August 14, 2002.

"Constitutional Limits on Punishment," Brasilia, Brazil, August 12, 2002.

"Southern and Texas Exceptionalism: Comparative Death Penalty Practices within the United States," University of Oregon Law School, March 1, 2002.

"Politics and Death Penalty Reform," Harvard Law School Colloquium Series, May, 2001 (with Carol Steiker).

"Judge Justice's Legacy: Reflections on Institutional Reform Litigation in the Federal Courts," Southern Methodist University, May, 2001.

"Should Abolitionists Support Legislative 'Reform' of the Death Penalty," Ohio State University, March, 2001 (with Carol Steiker).

"Election Law and Contemporary Equal Protection," Eleventh Circuit Judicial Conference, Amelia Island, Florida, December, 2000.

"Is Texas Exceptional? A Study of Death-Sentencing and Execution Rates in the Modern Era of Capital Punishment," Capital Punishment Symposium, University of Texas School of Law, November 10, 2000.

"Supreme Court Term" (1999-2000), Federal Judicial Center (broadcast to all courts within federal judiciary), Washington, D.C., July, 2000.

"Habeas Exceptionalism," Symposium on Restructuring the Federal Courts, University of Texas School of Law, November, 1999.

"Supreme Court Term" (1998-1999), Federal Judicial Center (broadcast to all courts within federal judiciary), Washington, D.C., July, 1999.

"Federal Habeas and the Antiterrorism and Effective Death Penalty Act," Continuing Legal Education, University of Minnesota, March, 1999.

"Federal Habeas Training: Theory and Practice," University of Texas School of Law," June 25, 1998.

"Restructuring Federal Habeas," Harvard Law School Colloquium Series, May 22, 1998.

"Empiricism and the Death Penalty," Cornell Law School, March 28, 1998.

"Reflections on Two Decades of the Death Penalty," St. Mary's Law School, March 6, 1998 (with Carol Steiker).

"Overproceduralism and Criminal Law," University of Chicago Law School, November 8, 1997.

"Constitutional Regulation of the Death Penalty," Braun Symposium, John Marshall Law School, Chicago, October 18, 1996 (with Carol Steiker).

"Kant and the Death Penalty," American Philosophical Association Pacific Division Meetings, Seattle, April 6, 1996.

"Sentencing in Capital Cases," Clason Lecture, Western New England School of Law, April 16, 1996.

"State Habeas Reform," Fifth Circuit Judicial Conference, Fort Worth, Texas, May 7, 1996.

"The Modern Experiment with Capital Punishment," University of Texas School of Law Colloquium, February, 1995 (with Carol Steiker).

"Developments in Federal Death Penalty Law," Texas District and County Attorneys Association, Spring, 1995.

"Thurgood Marshall and the Death Penalty: The Role of Stare Decisis in Justice Marshall's Jurisprudence," Amherst College, Spring, 1994.

"The Role of Innocence in Federal Habeas Corpus," American Political Science Association Annual Meeting, Fall, 1992.

#### **TEACHING AWARDS**

University of Texas Law School, Faculty Honoree for Dedication to Teaching, Law Week, February, 2006

University of Texas Law School, 1993-1994 Ethics in Teaching Award

Harvard University, 1987-1988 Teaching Fellowship Award

**ACADEMIC SERVICE** (selected positions)

Appointments Committee Chair, 2008-09; 2009-10; 2010-11.

Colloquium & Lectures Chair, 2005-06; 2007-08.

Judicial Clerkship Co-Chair, 2005.

Dean Search Committee Chair, 1999-2000.

Tenure Committee Chair, 1997-98.

Summer Cain Fellowship Program Director, 1994-96.

Curriculum Committee Chair, 1995-96.

Service on Various Committees

(Admissions Committee, Hearing Officer, Minority Student Retention and Opportunity Committee, Public Interest Law Advisor, Appointments Committee).

**PROFESSIONAL SERVICE**

Board Member, Texas Defender Service, 2004-2017 (Board Chair, 2011-2015).

ABA Death Penalty Moratorium Implementation Project, Steering Committee, 2009-12.

Prepared Report to the American Law Institute on the Role of Capital Provisions in the Model Penal Code (2007-08) (with Carol Steiker).

Frequent Lecturer in Trainings for Capital Litigators